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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

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W. A. DREW EDMONDSON, in his)
5 capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

)

9 Plaintiff,)

)

10 vs.)4:05-CV-00329-TCK-SAJ

)

11 TYSON FOODS, INC., et al,)

)

12 Defendants.)

13 -----

14 THE VIDEOTAPED DEPOSITION OF
15 RONALD MULLIKIN, produced as a witness on behalf
16 of the Plaintiff in the above styled and numbered
17 cause, taken on the 14th day of November, 2007, in
18 the City of Tulsa, County of Tulsa, State of
19 Oklahoma, before me, Lisa A. Steinmeyer, a Certified
20 Shorthand Reporter, duly certified under and by
21 virtue of the laws of the State of Oklahoma.

22

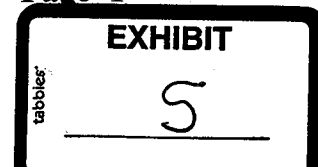
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Mullikin, Ronald 11/14/2007

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00041

1 happened at that time?

2 A I believe it did. I believe, if I may, there

3 were a number of things that had been agreed to by

4 the -- a number of integrators and the City of Tulsa

5 that the integrators would do certain things. This 02:59PM

6 may have been a part of that. I don't recall.

7 Q Let me go back to the first sentence of this

8 letter before I leave it. Would that statement have

9 had equal application to the Illinois River

10 watershed as it would have had, say, to the 02:59PM

11 Eucha-Spavinaw watershed?

12 MR. McDANIEL: Object to the form.

13 A As I said, I don't have any recollection of

14 what was going on in the Illinois River watershed at

15 that time. I was primarily involved in the 02:59PM

16 Eucha-Spavinaw.

17 Q Were the practices of cleaning out grow houses

18 periodically and spreading the waste generated in

19 those by the birds owned by Peterson the same in the

20 watersheds adjoining the Eucha watershed as they 03:00PM

21 were there?

22 A And I don't know as I could answer that. I

23 know Peterson Farms had -- if memory serves me

24 correctly, when we looked at the number of total

25 chicken houses that were in the Eucha-Spavinaw, 03:00PM

00057

1 Q Why did you feel, again, quoting your own
2 words, without any doubt that the company would be
3 found liable for the litter?

4 MR. McDANIEL: Object to the form.

5 A I felt that politically that was a decision 03:26PM
6 that would have been made because of those powers
7 pushing it that way, whether it was the EPA or the
8 City of Tulsa.

9 Q Next, let me direct your attention to the
10 second page. The next to the last paragraph where 03:27PM
11 you say, Dan, I feel the direction Peterson Farms
12 and all integrators would be best served to focus
13 its resources towards would be alternative uses.

14 Things such as using litter as bedding, feed,
15 fertilizer and fuel are just a few of the uses I've 03:27PM

16 found some information on. Each of these uses has
17 its own set of benefits and shortcomings, but they
18 all address the environmental need to stop applying
19 litter to our local pasture lands. In your position
20 as head of environmental affairs at Peterson Farms, 03:27PM
21 when you wrote that memorandum on March 27th, 1998,
22 why did you say that there was an environmental need
23 to stop applying litter to local pasture lands?

24 A Because, once again, of the loading of the
25 soils, the lands, the pasture lands of phosphates 03:28PM

00064

1 Q But I don't think we know much about the

2 results from that; right?

3 A No.

4 Q During the time you were employed at Peterson,

5 was the fact that the Illinois River was a scenic 03:36PM

6 river ever part of discussions in the company

7 regarding the concentration of poultry production in

8 that watershed?

9 MR. McDANIEL: Object to the form.

10 A Would you ask that again? 03:36PM

11 Q Yeah. During the time you were there at

12 Peterson Farms, was the fact that the Illinois River

13 was a scenic river ever a part of any discussions

14 you had with others in the management level of the

15 company? 03:36PM

16 A Not that I recall.

17 Q Was the environmental health of the Illinois

18 River watershed or the quality of waters in the

19 Illinois River watershed ever a high priority for

20 the company? 03:36PM

21 MR. McDANIEL: Object to the form.

22 A Once again, I don't recall discussions about

23 the Illinois River.

24 Q Okay. So you don't remember if any of the

25 managers of the company ever expressed to you any 03:37PM

00069

1 responsible for providing feed and helping the
2 grower manage those, and then at the time that those
3 animals are to be taken out and processed, the
4 company then takes those birds again and processes
5 them. 03:43PM

6 Q Was vertical integration important to Peterson
7 Farms when you were employed there?

8 MR. McDANIEL: Object to the form.

9 A It was the only way they did business that I
10 knew of. 03:43PM

11 Q Did vertical integration require that Peterson
12 maintain strict control over its growers'
13 operations?

14 MR. McDANIEL: Object to the form.

15 A Inasmuch as I knew what the growers' 03:43PM
16 operations were, I would say so.

17 Q Do you know of any specific ways the company
18 exerted control over its growers under contract?

19 MR. McDANIEL: Object to the form.

20 A I do not. 03:43PM

21 Q With regard to the disposition of bird
22 carcasses, especially in the case of large
23 catastrophic losses of birds, did the individual
24 grower have any choice about how to dispose of the
25 carcasses? 03:44PM

00100

1 Q Are you here speaking for Peterson Farms

2 today, Mr. Mullikin?

3 A No, I'm not.

4 Q Have you made any statement today, Mr.

5 Mullikin, that you intend to be binding upon 04:31PM

6 Peterson Farms?

7 A No.

8 Q When you were employed at Peterson Farms, you

9 were not an officer of the corporation; is that

10 correct? 04:31PM

11 A I was not.

12 Q So you were not authorized to make statements

13 that would be legally binding on Peterson Farms even

14 then; is that true?

15 MR. RIGGS: Object to the form. 04:32PM

16 A That's my understanding, yes.

17 Q Now, let's see. Mr. Riggs offered as exhibits

18 to your deposition a few memoranda that you wrote.

19 Let me get them organized here. I guess I see two,

20 Exhibit No. 4 and Exhibit No. 5? 04:32PM

21 A Yes.

22 Q Two memos that you wrote and, again, these

23 memos contain your personal views and opinions at

24 the time you drafted them; is that right?

25 A That's correct. 04:32PM

00101

1 Q And these two memos don't represent the
2 official position or views of Peterson Farms, do
3 they?

4 A These were simply a way for me to make them
5 aware of what I saw happening and how I felt it was 04:32PM
6 affecting us as a company.

7 Q Would you look at No. 4, what was Exhibit 4,
8 your memo dated March 27th, 1998, and the subject is
9 opinions on the poultry litter issues. You've
10 answered quite a few questions this afternoon about 04:33PM
11 practices, and if I understood your testimony
12 correctly, your focus and your familiarity was with
13 practices that were ongoing within the
14 Eucha-Spavinaw watershed because that was the
15 primary concern that was raised during that '98 04:33PM
16 through 2000 period; is that correct?

17 MR. RIGGS: Objection, leading.

18 A We -- the document or the agreement that I
19 mentioned before, the twelve points with the City of
20 Tulsa, was the primary concern at the time, and so 04:34PM
21 that was the focus of really what I was trying to
22 help gather information on and make sure that the
23 company was aware of all the ramifications and how
24 we might be able to do exactly what that agreement
25 asked us to do. 04:34PM

00102

1 Q Am I correct that in your prior testimony you

2 said you had little involvement or personal

3 knowledge about operations that were ongoing in the

4 Illinois River watershed?

5 A That's correct. 04:34PM

6 Q So the opinions that are expressed in Exhibits

7 4 and 5 are not really applicable to the Illinois

8 River watershed; am I right or wrong about that?

9 A That would be right.

10 Q Looking at some of the comments you made in 04:34PM

11 your March 27th, 1998 memo, you said in the last

12 paragraph, first page, we are also faced with a lack

13 of science to help us understand where we are and

14 where we need to go, and you say agronomists can't

15 agree on the movement of phosphate, the water 04:35PM

16 solubility of the P in the litter and means of

17 making P more efficient in our feeds and how much P

18 in our soils is too much. You say agencies can't

19 agree on max soil levels. Did I read your

20 statements correctly? 04:35PM

21 A That's what it says.

22 Q Did you have the view at that time that there

23 were a lot of folks that didn't seem to have their

24 facts straight?

25 A There were so many varied opinions. You could 04:35PM

00103

1 talk to different federal agencies and they couldn't

2 agree on different things. We talked about

3 establishing the 300 pounds. I recall now the

4 gentleman's name is Dennis Carmen with the NRCS.

5 Dennis and I would spend hours talking, and his boss 04:36PM

6 called from Washington struggling, trying to

7 establish some type of a number because of all of

8 the variables, and that's just one example of how

9 the agronomists and so many other people involved

10 couldn't agree. We couldn't agree on what soil lab 04:36PM

11 to use to take -- send all the soil samples to

12 because they had different extraction methods.

13 Q So is that one of the reasons that your job

14 function was to gather information, because there

15 was uncertainty? 04:36PM

16 A Yes.

17 MR. RIGGS: Objection, leading.

18 Q You made a comment a couple of times in your

19 testimony that -- where you referred to the

20 political environment was going to bring about 04:37PM

21 certain outcomes with regard to these issues, and so

22 let me ask you about this statement in your memo.

23 You say unfortunately too many of these regulations

24 are being driven by political ambition. We have

25 Vice-President Gore leading the fight to clean the 04:37PM

00104

1 nation's waterways, at the same time leading the
2 fight to become the next president, knowing full
3 well no one will be able to fight his environmental
4 record. We have the mayor of Tulsa who would like
5 to be the governor of Oklahoma. Politics will 04:37PM
6 continue to drive this issue. That was your opinion
7 at that time, sir?

8 A Yes.

9 Q When you made the statement to Mr. Henderson
10 where you say I do feel without any doubt that as 04:38PM
11 time passes, we, the integrator, will be found
12 liable for it, were you telling Mr. Henderson that
13 you believed Peterson might be held liable as a
14 consequence of being caught up in these politics
15 surrounding the issue? 04:38PM

16 MR. RIGGS: Objection, leading.

17 A Like I said before, my concern was that we
18 were trying to come up with solutions based on what
19 was going to be politically correct instead of what
20 was scientifically correct. 04:38PM

21 Q Is that the basis for your belief that
22 Peterson might ultimately be found for the litter
23 utilization is what you just stated?

24 MR. RIGGS: Objection, leading.

25 A Yes. There were states -- one of the Dakotas, 04:38PM

00105

1 for instance, I don't know if it was the AG or just

2 I don't recall what it was, that had filed suit

3 stating that the growers, for instance, I believe it

4 was in a hog operation, vertically integrated

5 operation where they were liable, that the manure 04:39PM

6 created by the pigs was indeed the producers, and so

7 that was part of the issue that I was concerned

8 about, that it was going to continue to be driven

9 throughout the country.

10 Q Was this -- is this risk of liability or 04:39PM

11 excuse me, at the time you wrote the memo, was it

12 your view that this risk of liability was driven by

13 politics rather than science?

14 A Absolutely.

15 Q Let me ask you to look at Exhibit No. 5. 04:39PM

16 That's your other memorandum. Your -- at the very

17 last sentence where you say or it may mean our

18 industry must take -- excuse me, must make some

19 changes in the way we do business, you testified in

20 response to some questions from Mr. Riggs that I 04:40PM

21 believe you said that some of the ways of changing

22 doing business would be changing clean-out

23 intervals, looking at feed additives, et cetera. Is

24 that a correct statement or -- is that a correct

25 statement? 04:40PM

00106

1 A Those would be some of the ways we had to
2 change business but there are others. You know,
3 whether or not we needed to -- I'm going to go back
4 to the science. Whether or not we needed to
5 participate more in the gathering of information, 04:40PM
6 whether, you know -- contractually I've never sat
7 down and read a contract between an integrator and
8 the growers, but we might need to change some of
9 those agreements so that we were more involved in
10 the way those decisions were made. 04:41PM

11 Q But you're not -- at the time you were
12 employed with Peterson, you were not in a position
13 to know what Peterson Farms could or could not
14 legally do with regard to its contracts and its
15 growers? 04:41PM

16 A That's correct.

17 Q When you made this statement about some
18 changes in the way we do business, were you
19 suggesting to Mr. Evans and Mr. Henderson that you
20 held the belief that at some point in time Peterson 04:41PM
21 Farms needed to be the owner of the litter?

22 A Once again, I was looking very strongly at
23 alternative uses, and one of the concerns that were
24 raised was whether or not being the growers owned
25 the litter, if an alternative use -- capital was 04:42PM

00107

1 spent to develop one of those, whether or not the

2 company would be able to then get the litter to

3 operate one of those alternative uses. So that's

4 another one of the concerns that I had as it

5 pertains to the way they do business. 04:42PM

6 Q Okay. Back to my question, you weren't

7 suggesting that Peterson take over control of the

8 poultry litter, were you?

9 MR. RIGGS: Objection, leading.

10 A No, I wasn't saying that they write a memo and 04:42PM

11 say we now own the litter, no.

12 Q In the time that you worked for Peterson

13 Farms, based upon your personal interaction with

14 poultry growers, did you find that Peterson poultry

15 growers were defensive of their right to control 04:42PM

16 their litter?

17 A Very much so.

18 Q The Exhibit 1 to the deposition, which is a

19 draft of this article --

20 A Yes. 04:43PM

21 Q Now, this -- the -- Mr. Rex Johns, was he the

22 principal author to your knowledge?

23 A No.

24 Q Who was?

25 A I believe -- what was the gentleman's name -- 04:43PM

00112

1 their fields, that water pollution will necessarily

2 result?

3 A No.

4 Q In your personal opinion, do you believe that

5 when poultry growers use poultry litter on their 04:49PM

6 fields, that water pollution is likely to result?

7 A I don't believe you can make that statement

8 either.

9 Q I want to walk through and fill in a little

10 additional information about some of your work 04:49PM

11 experiences both in and outside of Peterson Farms

12 and also to touch on some of your background. You

13 got asked today a number of fairly technical

14 questions, and have you received any specialized

15 training in the environmental sciences? 04:49PM

16 A No, I've not.

17 Q Any specialized training in soils?

18 A No, I've not.

19 Q Agronomy?

20 A No, I've not. 04:49PM

21 Q Microbiology?

22 A No, I've not.

23 Q Chemistry?

24 A No, I've not.

25 Q Human health effects? 04:50PM

00113

1 A No, I have not.

2 Q Sir, do you consider yourself to be qualified

3 by education or experience to offer scientific

4 opinions?

5 A Not to offer scientific opinions, no. 04:50PM

6 Q Do you consider yourself qualified by

7 education or experience to offer engineering

8 opinions?

9 A No, I do not.

10 Q When you -- what were you doing, sir, 04:50PM

11 employment-wise, what were you doing when you --

12 just before you were hired by Peterson Farms?

13 A I had taken a sabbatical from Wal-Mart

14 Corporation.

15 Q You -- when you gave your testimony in 2002, 04:50PM

16 you were back working for Sam's, the Sam's --

17 A Uh-huh.

18 Q -- in Iowa?

19 A Yes.

20 Q What location in Iowa? 04:50PM

21 A I was a regional marketing manager for the

22 state of Iowa.

23 Q And so prior to working at Peterson, had you

24 worked within the Wal-Mart, Sam's group prior to

25 working for Peterson? 04:51PM